

Department of Defense

206.304

206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b) (1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(2) Identifies the particular college or university involved, and

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the

statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993; 59 FR 36089, July 15, 1994; 60 FR 29497, June 5, 1995; 60 FR 40107, Aug. 7, 1995; 65 FR 39704, June 27, 2000; 68 FR 7439, Feb. 14, 2003]

206.302-7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.303 Justifications.

206.303-1 Requirements.

(d) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), is the agency point of contact for submission of justifications to the Office of the United States Trade Representative.

[56 FR 36303, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995; 68 FR 15618, Mar. 31, 2003; 69 FR 74991, Dec. 15, 2004]

206.304 Approval of the justification.

(a)(4) The Under Secretary of Defense (Acquisition, Technology, and Logistics) may delegate this authority to—

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

[61 FR 10285, Mar. 13, 1995, as amended at 61 FR 50451, Sept. 26, 1996; 65 FR 39704, June 27, 2000]